

6/12/91

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II

-----X
In the Matter of

MURATTI ENVIRONMENTAL SITE

Commonwealth Oil Refining

Company, Inc.

Alcon Puerto Rico, Inc..

Esso Standard Oil Co.

Puerto Rico, Inc.

The Shell Company

(Puerto Rico) Limited

Texaco Puerto Rico, Inc.

Roche Products, Inc.

Digital Equipment Corporation

Prime Computer, Inc. de Puerto Rico

Medtronic Puerto Rico, Inc.

ROHO Investment, Inc.

Respondents,

Proceeding under Section 106 of the

Comprehensive Environmental Response,

Compensation and Liability Act,

42 U.S.C. § 9606.
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ADMINISTRATIVE ORDER
ON CONSENT

INDEX No. II CERCLA-10303

I. INTRODUCTION

1. This Administrative Order on Consent ("Consent Order" or "Order") is entered into voluntarily between the United States Environmental Protection Agency ("EPA") and the above-captioned respondents (hereinafter, "Respondents"). The Consent Order concerns the performance of a removal action at the Muratti Site (the "Muratti Site") located in Penuelas, Puerto Rico.

II. STATEMENT OF PURPOSE

2. In entering into this Order, the objectives of EPA and the Respondents are: (a) to further the public interest; (b) to avoid prolonged and complicated litigation; (c) to abate the threat posed by the actual and/or threatened release of hazardous substances at and from the Muratti Site; (d) to reimburse EPA for oversight costs with respect to this Order; and (e) to conclude the performance of removal activities.

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III. JURISDICTION

3. This Consent Order is issued by EPA pursuant to the authority vested in the President of the United States under Sections 106(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9606(a), which authority was delegated to the Administrator of the United States Environmental Protection Agency ("EPA") pursuant to Executive Order 12580 and duly redelegated to the Regional Administrators of EPA. Notice of this Order was provided to the Environmental Quality Board ("EQB") of the Commonwealth of Puerto Rico ("Commonwealth").

Respondents' Reservation of Rights

4. By execution of this Order and by implementation of the work required hereunder, Respondents do not admit the truth of the factual statements and legal conclusions or allegations contained in this Order. Nor do Respondents admit any legal liability or waive any defenses or causes of action, under CERCLA or any other statute or regulation or common law (to the extent applicable), with respect to issues addressed in this Order, except as otherwise provided in this Order. Except as otherwise provided in this Order, Respondents reserve the right to contest, in any subsequent proceeding, the validity of, or the responsibility for, any of the factual or legal determinations made herein.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

5. The Muratti Site is located on Route 385, Km. 3.5, Tallaboa Ward, in a rural and light industrial section of the town of Penuelas, Puerto Rico.

6. The Muratti Site includes approximately 2 acres and is currently abandoned. The Muratti Site is directly adjacent to a residential neighborhood and contiguous with three commercial facilities known as Caribe Hydroblasting, Proteco and DG Enterprises.

7. The population within a one-mile radius of the Muratti Site is approximately 1,400. The Tallaboa River, which flows into the Tallaboa Bay and ultimately the Caribbean Sea, is approximately one-half ($\frac{1}{2}$) mile west of the Muratti Site. A dirt ditch system exists at the Site which can channel surface liquids off the property to the Tallaboa River.

8. The Muratti Site constitutes a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

9. The Muratti Site has been and is currently owned by Respondent ROHO Investment, Inc.

10. Between 1979 and 1981, the Muratti Site was leased to Muratti Construction, Inc. ("Muratti Construction"), and was operated by both Muratti Construction and Muratti Environmental Control, Inc. ("Muratti Environmental"). Muratti Environmental's operations included industrial waste disposal, hazardous waste transporting, oil spill cleanups and cleaning of industrial plant equipment. Respondents to this Order, except for Respondent ROHO Investment, Inc., utilized the services of Muratti Construction and Muratti Environmental.

11. In April 1980, Muratti Environmental applied for a permit to transport hazardous waste pursuant to the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6901-6967.

12. Muratti Environmental and Muratti Construction operated the Muratti Site from the winter of 1979-80 until February 1981, at which time they vacated the Muratti Site for non-payment of rent. At that time, deteriorating 55-gallon drums, containers and above-ground storage tanks were left abandoned at the Muratti Site.

13. A February 1985 inspection of the Muratti Site, conducted by NUS Corporation on behalf of EPA, revealed a number of flammable, corrosive and poisonous substances stored in a variety of containers, including above-ground storage tanks, 55-gallon drums, and laboratory bottles.

14. The 1985 inspection of the Muratti Site confirmed the presence of a number of "hazardous substances" as that term is defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14). Samples taken from drums and other containers, groundwater, surface water, soil and sediments at the Muratti Site have been found to contain hazardous substances including, but not limited to, 1,1,1-trichloroethane, benzene, acetone, toluene, 1,2-dichloroethane and lead.

15. On November 8, 1989, EPA re-investigated the Muratti Site. Results of the investigation revealed that conditions within the Muratti Site had deteriorated. Approximately one hundred-thirty (130) drums and other containers were scattered throughout the Muratti Site. Various drums located in unprotected areas on the bare ground were leaking their contents due to extreme corrosion at the bottom of the drums. Above-ground storage tanks containing corrosive liquids were open to the air. Stained soil was also evident at the Site.

16. The presence of hazardous substances in groundwater, surface water, soils, sediments and containers at the Muratti Site constitutes a "release" within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), in that, among other things, such substances have leaked, spilled and/or been disposed of into the environment, and open and closed receptacles containing hazardous

substances have been abandoned, discarded and disposed of at the Muratti Site. In addition, there is a threat of further such releases at and from the Muratti Site.

17. The hazardous substances identified at the Muratti Site may cause a variety of adverse human health effects.

18. The hazards posed by the Muratti Site include, but are not limited to: the threat of direct contact by individuals with hazardous substances at the Muratti Site, the threat of further releases of hazardous substances from drums and other containers at the Muratti Site, the threat of migration of hazardous substances present in soils at the Muratti Site and the threat of contamination of groundwater.

19. In response to the release and threat of release of hazardous substances at the Muratti Site, EPA, on May 11, 1990, issued an Action Memorandum authorizing the performance of a removal action at the Muratti Site, pursuant to Section 104 of CERCLA and Section 300.65 of the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 CFR § 300.415 (4/9/90). The Action Memorandum called for, among other things, securing the Muratti Site, conducting an inventory, segregating, and sampling of the materials in drums and other containers, and the proper off-Site transportation and disposal of the drums, containers and their contents.

20. In response to the release and threat of release of hazardous substances at the Muratti Site, and pursuant to Section 106 of CERCLA, on May 14, 1990, EPA issued Administrative Order on Consent Index No. II CERCLA-00302 (hereinafter, "May 1990 Order"), to Muratti Construction, Inc., Muratti Environmental Control, Inc., and Osvaldo Muratti (hereinafter jointly referred to as "Muratti"), requiring them to conduct a removal action at the Muratti Site, which included, among other things, securing the Muratti Site, stabilizing leaking drums, removal of visibly contaminated soil at the Muratti Site, and off-site disposal of the drums and other containers of hazardous substances from the Muratti Site.

21. On August 29, 1990, EPA approved two work plans (as modified by an August 6, 1990 letter from Law Environmental to Luis Santos, EPA), which were submitted pursuant to the May 1990 Order entitled "Revised Draft Work Plan for the Waste Characterization at Muratti Environmental Control, Inc. Site, dated July 1990, and the "Work Plan, Muratti Site", dated July 19, 1990 (hereinafter collectively referred to as, the "Work Plan").

22. Muratti failed to undertake the field work activities called for in the Work Plan pursuant to the First Order. Accordingly, on November 5, 1990, EPA commenced field work at the Muratti Site using federal funds. Activities conducted at the Muratti Site by

EPA have included maintaining Site security, stabilizing, repacking and inventorying drums and other containers at the Muratti Site, and collecting samples from the drums and other containers at the Muratti Site for analysis.

23. Analytical results of samples taken in December 1990 from the drums, tanks and other containers indicate the presence of hazardous substances including, but not limited to, acetone, toluene, dichloroethane, 1,1,1-trichloroethane, trichloroethene, cyanide, lead, barium, dibenzofuran, naphthalene, and benzene.

24. Each of the Respondents to this Order is a "person", within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21). Respondent Commonwealth Oil Refining Company, Inc. is a corporation organized and existing under the laws of the Commonwealth of Puerto Rico. Respondent Alcon Puerto Rico, Inc. is a corporation organized and existing under the laws of the state of Delaware. Respondent Esso Standard Oil Co. Puerto Rico, Inc. is a corporation organized and existing under laws of the Bahamas. Respondent The Shell Company (Puerto Rico) Limited is a corporation organized and existing under laws of England. Respondent Texaco Puerto Rico, Inc. is a corporation organized and existing under the laws of the Commonwealth of Puerto Rico. Respondent Roche Products, Inc. is a corporation organized and existing under the laws of Panama. Respondent Digital Equipment Corporation is a corporation organized and existing under the laws of the state of Delaware. Respondent Prime Computer, Inc. is a corporation organized and existing under the laws of the state of Delaware. Respondent Medtronic Puerto Rico, Inc. is a corporation organized and existing under the laws of the state of Minnesota. Respondent ROHO Investment, Inc. is a corporation organized and existing under the laws of the Commonwealth of Puerto Rico.

25. Respondent ROHO Investment, Inc. is an "owner or operator" within the meaning of Section 101(20)(A) of CERCLA, 42 U.S.C. § 9601(20)(A), and is therefore a potentially responsible parties pursuant to Sections 107(a)(1) and (2) of CERCLA, 42 U.S.C. §§ 9607(a)(1) and (2). The other Respondents to this Order are potentially responsible parties pursuant to Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

26. Respondents have been given an opportunity to discuss with EPA the basis for issuance of this Order and its terms.

V. DETERMINATION

27. Based on the Findings set forth above and other information available to EPA as of the date of issuance of this Order, EPA has determined that the release and threatened release of hazardous substances to the environment from the Muratti Site may present an imminent and substantial endangerment to the public

health or welfare or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

VI. ORDER

28. Based on the foregoing Findings and Determination and other information available to EPA as of the date of issuance of this Order, it is hereby ordered and agreed that Respondents shall perform response actions at the Muratti Site in accordance with the requirements and schedule specified below. All such actions shall be undertaken in accordance with the provisions of this Consent Order and the Work Plan referred to in Paragraph 21., above, as modified by Paragraph 30.a., below. The Work Plan is incorporated into and made an enforceable part of this Order. All actions required by this Consent Order shall be completed as soon as possible even though maximum time periods for their completion are set forth herein and in the plans and schedules approved by EPA pursuant to this Order.

Description of Work

29. Beginning on the effective date of this Order, Respondents shall provide a security guard at the Muratti Site whenever work under this Order is not being performed and shall maintain such security until the removal of the drums and other containers identified by EPA during the inventory of the Muratti Site.

30. Within fifteen (15) calendar days of the effective date of this Order, Respondents shall submit to EPA for review and approval:

- a. a detailed time schedule for performance of the removal tasks set forth in Paragraph 32., below, and in the Work Plan that have not been completed as of the effective date of this Order, as well as a detailed description of how those tasks will be accomplished.
- b. an overall Muratti Site management plan, including identification of, or provision for later advance identification of, contractors and subcontractors and their respective responsibilities for performance of the tasks set forth in this Order and the curricula vitae of all professionals expected to participate in the work, together with a description of the responsibilities of each of those professionals;

31. EPA will either approve the schedule and the Muratti Site management plan, or will require modification of it, in accordance with the procedures set forth in Paragraphs 39. through 41., below.

32. Within twenty (20) calendar days of Respondents' receipt of EPA approval of the schedule and the Muratti Site management plan referred to above, Respondents shall, consistent with the results of the disposal analysis conducted by EPA, begin off-site disposal of the drums, tanks, and other containers (including contents) identified by EPA during the inventory of the Muratti Site and shall begin excavation and proper off-Site disposal of all visibly contaminated soils present at the Muratti Site, which EPA estimates to be approximately seven (7) cubic yards.

33. All of the work required pursuant to Paragraphs 29. through 32., above, shall be completed by Respondents as soon as possible, but in no event later than one (1) month after the commencement of off-site disposal of the wastes from the Muratti Site unless specifically approved by EPA in writing.

34. Final determination of what constitutes visibly contaminated soil or material to be removed pursuant to Paragraph 32., above, will be made by the EPA On-Scene Coordinator.

35. Respondents shall request EPA approval of any proposed disposal alternatives including, but not limited to, bulking of the containerized liquids or other material at the Muratti Site prior to disposal.

36. All waste disposal conducted by Respondents pursuant to this Order shall be performed in compliance with all requirements of CERCLA, including but not limited to Section 121(d)(3), 42 U.S.C. § 9621(d)(3), the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6901-6967, and all regulations promulgated pursuant thereto, and all other applicable federal, Commonwealth, and state laws and regulations. In addition, all waste disposal conducted by Respondents pursuant to this Order shall be carried out in compliance with all applicable EPA policies and guidance documents including, but not limited to, the EPA guidance document entitled, "Superfund Removal Procedures" (OSWER, 1988). In addition, if hazardous substances from the Muratti Site are to be shipped to a waste management facility outside of the Commonwealth of Puerto Rico, Respondents shall insure that the environmental agency of the accepting state or commonwealth is notified of: (i) the name and location of the facility to which the waste is to be shipped; (ii) the type and quantity of waste to be shipped; (iii) the expected schedule for the waste shipments; and (iv) the method of transportation. Respondents shall provide such notification to the accepting state or commonwealth in writing as soon as practicable, but in any event at least five (5) business days prior to the said shipments.

37. Respondents shall notify EPA of the waste treatment, storage, or disposal facilities that Respondents propose to use for waste disposal conducted pursuant to this Order at least five

(5) business days prior to off-Site shipment of such wastes, and EPA shall have the right to disapprove such facility.

38. At the time of completion of all activities required by this Order, demobilization shall include sampling and proper disposal or decontamination of protective clothing, remaining laboratory samples and any equipment or structures constructed to facilitate the cleanup.

Plans and Reports Requiring EPA Approval

39. If EPA disapproves or otherwise requires any modifications to any plan, report or other item required to be submitted to EPA for approval pursuant to this Order, Respondents shall have fourteen (14) days from the receipt of notice of such disapproval or the required modifications to correct any deficiencies and resubmit the plan, report or other written document to EPA for approval, unless a shorter or longer period is specified in the notice. Any notice of disapproval will include an explanation of why the plan, report or other item is being disapproved. EPA will provide Respondents with an opportunity to consult with EPA after receipt of such notice. Respondents shall address each of the comments and resubmit the plan, report or other item with the required changes within the time referred to above. At such time as EPA determines that the plan, report or other item is acceptable, EPA will transmit to Respondents a written statement to that effect.

40. If any plan, report or other item required to be submitted to EPA for approval pursuant to this Order cannot be approved by EPA even after being resubmitted to EPA following EPA comments on the initial submittal, Respondents shall be deemed to be out of compliance with this Order. If any resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, EPA may again direct Respondents to make the necessary modifications thereto, and/or EPA may amend or develop the item(s) and recover the costs of doing so from Respondents. Respondents shall implement any such item(s) as amended or developed by EPA.

41. EPA shall be the final arbiter in any dispute regarding the sufficiency or acceptability of all documents submitted and all activities performed pursuant to this Order. EPA may modify those documents and/or perform or require the performance of additional removal work unilaterally.

Designated Coordinator, Other Personnel

42. Within three (3) business days of the effective date of this Order, Respondents shall select a coordinator, to be known as the Designated Coordinator, and submit the name, address, qualifications and telephone number of the Designated Coordinator to EPA for approval. The Designated Coordinator shall be

responsible for the Respondents' oversight of implementation of this Order and he or she shall have technical expertise sufficient to adequately oversee all aspects of the work contemplated by this Order. EPA correspondence to the Respondents will be sent to the Designated Coordinator. Respondents shall have the right to change their Designated Coordinator. However, Respondents shall notify EPA in writing at least seven (7) days prior to any such change.

43. The EPA On-Scene Coordinator for the Muratti Site is: Luis Santos, Caribbean Field Office, U.S. Environmental Protection Agency, 1413 Fernandez Juncos Avenue, Santurce, Puerto Rico 00909, (809) 729-6922. EPA will notify the Designated Coordinator if EPA's On-Scene Coordinator should change. The Alternate On-Scene Coordinator for the Muratti Site is: Angel Rodriguez, Response and Prevention Branch, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Woodbridge Avenue, Edison, N.J. 08837, (201) 321-6664.

44. Respondents shall provide a copy of this Consent Order to each contractor and subcontractor retained to perform the work required by this Order. Respondents shall include in all contracts or subcontracts entered into for work required under this Order provisions stating that such contractors or subcontractors, including their agents and employees, shall perform activities required by such contracts or subcontracts in compliance with this Order and all applicable laws and regulations. Respondents shall be responsible for ensuring that their contractors and subcontractors perform the work contemplated herein in accordance with this Order.

45. All activities required of Respondents under the terms of this Order shall be performed only by well-qualified persons possessing all necessary permits, licenses, and other authorizations required by federal, state, Commonwealth and local governments.

Insurance/Financial Responsibility

46. Prior to commencing any on-Site work, Respondents shall submit to EPA a certification that Respondents or their contractors and subcontractors have adequate insurance coverage or indemnification for liabilities for injuries or damages to persons or property which may result from the activities to be conducted by or on behalf of Respondents pursuant to this Consent Order. Respondents shall ensure that such insurance or indemnification is maintained for the duration of the work required by this Consent Order.

Reporting Requirements

47. All reports and other documents submitted by Respondents to EPA (other than the weekly progress reports referred to below) which purport to document Respondents' compliance with the terms of this Order shall be signed by an individual who will certify that he/she has been fully authorized by Respondents to submit such a document and to legally bind all Respondents thereto.

48. Beginning one (1) week after the effective date of this Order and every week thereafter, Respondents shall provide weekly written progress reports to EPA (at the addresses provided in Paragraph 49., below) which fully describe all actions and activities undertaken pursuant to this Order. Such progress reports shall, among other things: describe the actions taken toward achieving compliance with this Order during the previous week; include all results of sampling and tests and all other data received by Respondents during that period; describe all actions which are scheduled for the next week including the dates of all upcoming on-Site work to be performed hereunder; provide other information relating to the progress of work as is customary in the industry; and include information regarding percentage of completion, all delays encountered or anticipated that may affect the future schedule for completion of the work required hereunder, and a description of all efforts made to mitigate those delays or anticipated delays.

49. All work plans, reports, notices and other documents required to be submitted to EPA pursuant to this Order shall be made in writing by submitting one (1) copy to the EPA On-Scene Coordinator whose address appears in Paragraph 43., above, and to:

Chief, New York/Caribbean Superfund Branch II
Emergency and Remedial Response Division
United States Environmental Protection Agency
26 Federal Plaza, Room 747
New York, New York 10278
Re: Muratti Environmental Site

Chief, New York/Caribbean Superfund Branch
Office of Regional Counsel
United States Environmental Protection Agency
26 Federal Plaza, Room 437
New York, New York 10278
Attn: Muratti Environmental Site Attorney

50. Upon the occurrence of any event during performance of the work required hereunder which event, pursuant to Section 103 of CERCLA, requires reporting to the National Response Center, Respondents shall immediately orally notify the EPA On-Scene Coordinator or, in the event of his unavailability, the Chief of

the Response and Prevention Branch of the Emergency and Remedial Response Division of EPA Region II at (201) 321-6656, in addition to the reporting required by Section 103. Within twenty (20) days of the onset of such an event, Respondents shall furnish EPA with a written report setting forth the events which occurred and the measures taken, and to be taken, in response thereto.

51. As appropriate during the course of implementing the actions required of Respondents pursuant to this Order, Respondents or their consultant(s) or contractor(s), acting through the Designated Coordinator, may confer with EPA concerning the required actions. Based on new circumstances or new information not in the possession of EPA on the date of issuance of this Order, the Designated Coordinator may submit a request to the OSC, in writing, for approval of a modification to the work described in this Order and in the Work Plan, as modified by Paragraph 30.a., above. If approved by the EPA in writing, such modification shall be deemed incorporated into this Order.

52. In the event of a significant change in conditions at the Muratti Site or adjacent areas, the Designated Coordinator shall immediately notify the EPA On-Scene Coordinator or, in the event of his unavailability, the Chief of the Response and Prevention Branch of the Emergency and Remedial Response Division of EPA Region II at the following telephone number: (201) 321-6656. In the event that EPA determines that the activities performed pursuant to this Order or significant changes in conditions at the Muratti Site pose a threat to human life or health or the environment, EPA may direct Respondents to stop further implementation of any actions pursuant to this Order or to take other and further actions reasonably necessary to abate the threat. This provision is not to be construed so as to limit any powers EPA has under the NCP or under any other applicable law or regulation.

Oversight

53. During the implementation of the requirements of this Order, Respondents and their contractors and subcontractors shall be available for such conferences with EPA and inspections by EPA at and around the Muratti Site as EPA may determine are necessary for EPA to adequately oversee the work being carried out and/or to be carried out pursuant to this Order.

54. Respondents and their employees, agents, contractors and consultants shall cooperate with EPA in its efforts to oversee Respondents' implementation of this Order.

Access and Availability of Data

55. Respondents shall be responsible for obtaining in a timely fashion such access to the Muratti Site and any other premises

where work under this Order is to be performed as is necessary for Respondents to carry out the requirements of this Order. Respondents shall use best efforts to obtain such access. This Order does not convey any rights of access upon Respondents. If access is not obtained, Respondents shall immediately notify EPA, and EPA may, as appropriate, obtain access for Respondents. Respondents shall reimburse EPA for all costs and attorneys fees incurred by the United States to obtain access for Respondents.

56. EPA and its designated representatives, including but not limited to employees, agents, contractors and consultants thereof, shall be permitted to observe the work carried out pursuant to this Order. Respondents shall permit EPA and its designated representatives full access to and freedom of movement at the Muratti Site and any other premises where work under this Order is to be performed, at all times, including, but not limited to, any time that work under this Order is being performed, for purposes of inspecting or observing Respondents' progress in implementing the requirements of this Order, verifying the information submitted to EPA by Respondents, conducting investigations relating to contamination at the Muratti Site, or for any other purpose EPA determines to be reasonably related to EPA oversight of the implementation of this Order.

57. All data, information and records created, maintained or received by Respondents or their contractors or consultants in connection with implementation of the work under this Order, including but not limited to contractual documents, invoices, receipts, work orders and disposal records, shall, without delay, be made available to EPA on request. EPA shall be permitted to copy all such documents. No such data, information, or records shall be destroyed for eight (8) years after completion of the work required by this Order without either the express written approval of EPA or a written offer by Respondents to provide such material to EPA, followed by EPA's written rejection of that offer. Following said eight-year period, Respondents shall notify EPA at least thirty (30) days prior to the destruction of any such documents.

58. Upon request by EPA, Respondents shall provide EPA or its designated representatives with duplicate and/or split samples of any material sampled from the Muratti Site or in connection with the implementation of this Order.

59. Notwithstanding any other provision of this Order, EPA hereby retains all of its information gathering, access and inspection authority under CERCLA, RCRA and any other applicable statute or regulations.

Community Relations

60. Respondents shall cooperate with EPA in providing information relating to the work required hereunder to the public. As requested by EPA, Respondents shall participate in the preparation of all appropriate information disseminated to the public and in public meetings which may be held or sponsored by EPA to explain activities at or concerning the Muratti Site.

General Provisions

61. Each Respondent is jointly and severally liable for the implementation of the work required by this Order and for compliance with all provisions of this Order. This Order should in no way be construed as relieving Muratti of any of their obligations under the First Order.

62. This Order shall apply to and be binding upon Respondents, as well as their officers, directors, agents, contractors, technical consultants, successors, assigns, receivers and trustees.

63. All actions and activities carried out by Respondents pursuant to this Order shall be performed in accordance with all applicable federal, state, Commonwealth and local laws, regulations, and requirements, including but not limited to the NCP and any amendments thereto that are promulgated while this Order is in effect.

64. Notwithstanding any other provision in this Order, and in accordance with Section 121(e)(1) of CERCLA, 42 U.S.C. § 9621(e)(1), no federal, state, Commonwealth or local permits shall be required for any portion of the work required hereunder that is conducted entirely on-site, although Respondents must comply with the substantive requirements that would otherwise be included in such a permit. Respondents shall obtain all permits necessary for off-site work under federal, state, Commonwealth or local laws and shall submit timely applications and requests for any such permits. This Order is not, nor shall it act as, a permit issued pursuant to any federal, state or Commonwealth statute or regulation.

65. All work conducted pursuant to this Order shall be performed in accordance with prevailing professional standards.

66. All plans, reports and other documents approved by EPA pursuant to this Order shall, upon approval, be deemed to be incorporated into, and an enforceable part of, this Order.

67. All documents submitted by Respondents to EPA in the course of implementing this Order shall be available to the public unless identified as confidential by Respondents pursuant to 40

CFR Part 2, Subpart B and determined by EPA to merit treatment as confidential business information in accordance with applicable law. In addition, EPA may release all such documents to EQB and EQB may make those documents available to the public unless Respondents conform with applicable Puerto Rico law and regulations regarding confidentiality. Respondents shall not assert a claim of confidentiality regarding any monitoring or hydrogeologic data, any information specified under Section 104(e)(7)(F) of CERCLA, or any other chemical, scientific or engineering data relating to the work performed hereunder.

68. Neither EPA nor the United States, by issuance of this Order, assumes any liability for any injuries or damages to persons or property resulting from acts or omissions by Respondents or Respondents' employees, agents, contractors or consultants in carrying out any action or activity pursuant to this Order, nor shall EPA or the United States be held as or be held out to be a party to any contract entered into by Respondents or Respondents' officers, employees, agents, contractors or consultants in carrying out any action or activity pursuant to this Order.

69. Respondents agree to indemnify and hold harmless EPA and the United States Government, its agencies, departments, agents and employees, from all claims, causes of action, damages and costs of any type or description by third parties for any injuries or damages to persons or property resulting from acts or omissions of Respondents, their officers, directors, officials, agents, servants, receivers, trustees, successors or assigns, as a result of the fulfillment or attempted fulfillment of the terms and conditions of this Order by Respondents.

70. Nothing contained in this Order shall affect any right, claim, interest, defense, or cause of action of any party hereto with respect to third parties.

71. Nothing in this Order shall be construed to constitute preauthorization under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2), and 40 CFR § 300.25(d).

72. Respondents agree not to make any claims pursuant to Sections 106(b)(2), 111 and/or 112 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9611, 9612, or any other provision of law, either directly or indirectly, for reimbursement from the Hazardous Substance Superfund of costs incurred by Respondents in complying with this Order.

73. Nothing herein shall constitute or be construed as a satisfaction or release from liability for Respondents or Respondents' officers, directors, employees, agents, contractors, consultants, receivers, trustees, successors or assigns or for any other individual or entity. Nothing herein shall constitute

a finding that Respondents are the only potentially responsible parties with respect to the release and threatened release of hazardous substances at and from the Muratti Site.

74. No informal advice, guidance, suggestions or comments by EPA shall be construed to relieve Respondents of any of their obligations under this Order.

75. a. Respondents' activities under this Order shall be performed within the time limits set forth herein, or otherwise established or approved by EPA, unless performance is delayed by events which constitute force majeure. For purposes of this Order, "force majeure" is defined as any event arising from causes beyond Respondents' control, and that of its contractors and subcontractors, that delays the timely performance of any obligation under this Order. Force majeure shall not include inability of Respondents to pay the costs or expenses associated with complying with this Order or increases in such costs or expenses. When an event constituting force majeure occurs, Respondents shall perform the affected activities within a time period which shall not exceed the time provided in this Order together with the period of delay attributed to the force majeure; provided, however, that no deadline shall be extended beyond a period of time that is reasonably necessary. Respondents shall use their best efforts to avoid or minimize any delay or prevention of performance of their obligations under this Order.

b. Respondents shall verbally notify the EPA On-Scene Coordinator that circumstances have occurred or are likely to occur which may delay or prevent the performance of any activity required by this Order, regardless of whether those circumstances constitute force majeure or not. If the On-Scene Coordinator cannot be reached, Respondents shall leave a message at his/her office. In addition, Respondents shall notify EPA in writing within seven (7) calendar days after the date when Respondents first become aware of the circumstances which may delay or prevent performance. Such written notice shall be accompanied by all available pertinent documentation including, but not limited to, third-party correspondence, and shall contain the following: 1) a description of the circumstances, and Respondents' rationale for interpreting such circumstances as being beyond their control (should that be Respondents' claim); 2) the actions (including pertinent dates) that Respondents have taken and/or plan to take to minimize any delay; and 3) the date by which or the time period within which Respondents propose to complete the delayed activities. Such notification shall not relieve Respondents of any of their obligations under this Order. Respondents' failure to timely and properly notify EPA as required by this Paragraph shall render the remaining provisions of this Paragraph 75 null and void insofar as they may entitle Respondents to an extension

of time. The burden of proving that an event constituting force majeure has occurred shall rest with the Respondents.

76. This Order may be amended by mutual agreement of EPA and Respondents. Such amendments shall be in writing and shall have as their effective date the date on which such amendments are signed by EPA.

77. Except where expressly stated otherwise herein, all time periods specified in this Order shall be construed as calendar days rather than business days.

78. If the date for submission of any item or notification required by this Order falls upon a weekend or federal or Commonwealth holiday, the time period for submission of that item or notification is extended to the next business day following the weekend or holiday.

Reimbursement

79. Respondents agree to reimburse EPA for all costs, as that term is defined in Section 101(25) of CERCLA and relevant case law, incurred by the U.S. Government during the performance of this Order, including both direct and indirect costs. EPA will periodically transmit to Respondents accountings of the costs incurred by EPA. Such costs will include both direct and indirect costs. Respondents shall, within thirty (30) days of receipt of each such accounting, remit a cashier's or certified check for the amount of those costs, made payable to the "Hazardous Substance Superfund." Such payments shall contain a reference to the index number of this Order and shall be mailed to the following address:

U.S. Environmental Protection Agency - Region II
Attn: Superfund Accounting
P.O. Box 360188M
Pittsburgh, PA 15251

Such payments shall also be accompanied by a letter of explanation including the names and addresses of Respondents, the name of the Site (Muratti Environmental Site), and the EPA Region number (EPA Region II); copies of the letter and the check shall be sent to the EPA addresses listed in Paragraph 49., above. Interest shall accrue on any amounts overdue under this Paragraph pursuant to 31 U.S.C. § 3717.

Enforcement

80. Failure of Respondents to completely carry out the terms of this Order within the time periods set forth in or established pursuant to this Order, may result in EPA taking the required

actions unilaterally, pursuant to Section 104(a) of CERCLA, 42 U.S.C. § 9604(a).

81. If Respondents fail, without prior EPA approval, to comply with any of the requirements or time limits set forth in or established pursuant to this Order, and such failure is not excused under the terms of Paragraph 75. above, Respondents shall, upon demand by EPA, pay a stipulated penalty to EPA in the amount indicated below for each day of noncompliance:

<u>Days After Required Date</u>	<u>Stipulated Penalty</u>
1 to 7 days	\$1000.00/day
8 to 14 days	\$2000.00/day
15 to 30 days	\$4000.00/day

Any such penalty shall accrue as of the first day after the applicable deadline has passed, and shall continue to accrue until the noncompliance is corrected, through the 30th day of such noncompliance. Such penalties shall be due and payable ten (10) days following receipt of a written demand from EPA. Payment of any such penalty to EPA shall be made by cashier's or certified check made payable to the "Hazardous Substance Superfund," with a notation of the index number of this Order, and shall be mailed to the address set forth in Paragraph 79., above. A letter stating the basis for the penalties, the names and addresses of Respondents, the name of the Site, and the EPA Region number shall accompany each such payment; copies of the letter and the check shall be mailed to the EPA addresses listed in Paragraph 49., above.

82. Notwithstanding any other provision of this Order, failure of Respondents to comply with any provision of this Order may result in the initiation of an enforcement action against Respondents pursuant to, inter alia, Sections 106(b)(1) and/or 107(c)(3) of CERCLA, 42 U.S.C. §§ 9606(b)(1), 9607(c)(3), which may result in, among other things, the assessment of fines of up to \$25,000 for each day of such non-compliance, and/or the assessment of punitive damages.

83. Notwithstanding any other provision of this Order, EPA reserves its right to bring an action against Respondents (or any other responsible party) pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for recovery of any costs incurred by the United States Government with respect to the Muratti Site, to the extent that such costs are not paid by Respondents pursuant to Paragraph 79., above.

84. Nothing herein shall preclude EPA from taking any additional enforcement actions and/or other actions as it may deem necessary or appropriate for any purpose, including, but not limited to, the investigation, prevention or abatement of a threat to the

public health, welfare or the environment arising from conditions at the Muratti Site.

Termination and Satisfaction

85. When Respondents are satisfied that the work required by this Order has been completed, Respondents shall submit a written report to EPA specifically setting forth how this Consent Order has been satisfactorily implemented and complied with. This report shall be accompanied by appropriate documentation which substantiates Respondents' assertion that the work required hereunder has been completed to the satisfaction of EPA. The report shall further include a certification signed by a responsible official representing each Respondent. For purposes of this Consent Order, a responsible official is a corporate official who is in charge of a principal business function. The official(s) shall make the following attestation:

"I certify and/or declare under penalty of perjury under the laws of the United States and of the Commonwealth of Puerto Rico that the information contained in and accompanying this submission to the United States Environmental Protection Agency is true, accurate, and complete in every respect."

"As to the following specifically identified portion(s) of this submission which I cannot attest to as true, accurate and complete on the basis of personal knowledge, I hereby certify and/or declare that I have fully investigated the bases of this submission, and the submission itself in its entirety for the purpose of making this certification and/or declaration, and have concluded that it is true, accurate and complete in every respect. I further certify and/or declare that I am fully responsible for its content to the fullest extent allowable by law."

Upon a determination by EPA, following its receipt of the aforesaid sworn report, that the work required pursuant to this Consent Order has been fully carried out in accordance with this Order, EPA shall so notify Respondents in writing.

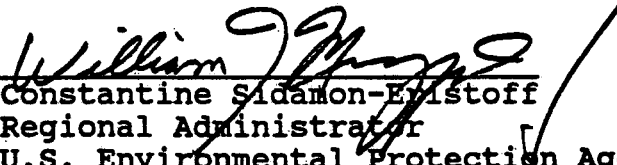
Effective Date and Effect of Consent

86. This Order shall become effective on the fifth (5th) business day after it is signed by the Regional Administrator of EPA Region II, and all times for performance of actions or activities under this Order shall be calculated from said effective date.

87. Respondents agree not to contest the authority or jurisdiction of the Regional Administrator of EPA Region II to issue this Order, and also agree not to contest the validity or terms of this Order in any action to enforce its provisions.

Further, by consenting to this Order, Respondents waive any rights they may have to seek reimbursement pursuant to Sections 106(b)(2), 111 and/or 112 of CERCLA for the response costs incurred by them in complying with this Order.

U.S. ENVIRONMENTAL PROTECTION AGENCY


Constantine Sidamon-Eristoff
Regional Administrator
U.S. Environmental Protection Agency
Region II

6/12/91
Date of Issuance

CONSENT

The Respondent identified below has had an opportunity to confer with EPA to discuss this Order. The Respondent hereby consents to the issuance of this Order and to its terms. Furthermore, the individual signing on behalf of Respondent certifies that he or she is fully authorized to agree to the terms and conditions of this Order and to legally bind Respondent.

NAME OF RESPONDENT

ALCON (PUERTO RICO) INC
(printed)

Lee D. Hansen
(signature)

JUNE 7, 1991
DATE

LEE D. HANSEN
(printed name of signatory)


VICE PRESIDENT OF OPERATIONS
(title of signatory)

CONSENT

The Respondent identified below has had an opportunity to confer with EPA to discuss this Order. The Respondent hereby consents to the issuance of this Order and to its terms. Furthermore, the individual signing on behalf of Respondent certifies that he or she is fully authorized to agree to the terms and conditions of this Order and to legally bind Respondent.

NAME OF RESPONDENT

COMMONWEALTH OIL REFINING CO. INC.
(printed)


(signature)

PEDRO A. SANTIAGO RIOS
(printed name of signatory)

VICE PRESIDENT

(title of signatory)


JUNE 6, 1991
DATE

CONSENT

The Respondent identified below has had an opportunity to confer with EPA to discuss this Order. The Respondent hereby consents to the issuance of this Order and to its terms. Furthermore, the individual signing on behalf of Respondent certifies that he or she is fully authorized to agree to the terms and conditions of this Order and to legally bind Respondent.

NAME OF RESPONDENT

DIGITAL EQUIPMENT CORPORATION
(printed)


(signature)

JUNE 7, 1991
DATE

FRANCIS TORRES
(printed name of signatory)

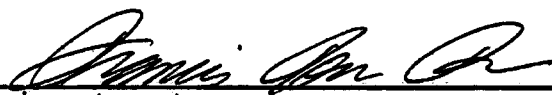
LEGAL COUNSEL
(title of signatory)

CONSENT

The Respondent identified below has had an opportunity to confer with EPA to discuss this Order. The Respondent hereby consents to the issuance of this Order and to its terms. Furthermore, the individual signing on behalf of Respondent certifies that he or she is fully authorized to agree to the terms and conditions of this Order and to legally bind Respondent.

NAME OF RESPONDENT

ESSO STANDARD Oil Company (Puerto Rico)
(printed)


(signature)

JUNE 7, 1991
DATE

FRANCIS TORRES
(printed name of signatory)

LEGAL COUNSEL
(title of signatory)

CONSENT

The Respondent identified below has had an opportunity to confer with EPA to discuss this Order. The Respondent hereby consents to the issuance of this Order and to its terms. Furthermore, the individual signing on behalf of Respondent certifies that he or she is fully authorized to agree to the terms and conditions of this Order and to legally bind Respondent.

NAME OF RESPONDENT

MEDTRONIC PEURTO RICO, INC.

(printed)

Pedro Rivera
(signature)

5 June 1991
DATE

PERICLES RIVERA
(printed name of signatory)

GENERAL MANAGER
(title of signatory)


CONSENT

The Respondent identified below has had an opportunity to confer with EPA to discuss this Order. The Respondent hereby consents to the issuance of this Order and to its terms. Furthermore, the individual signing on behalf of Respondent certifies that he or she is fully authorized to agree to the terms and conditions of this Order and to legally bind Respondent.

NAME OF RESPONDENT

Prime Computer, Inc. de Puerto Rico

(printed)



(signature)

6/3/91

DATE

Anthony N. Fiore, Jr

(printed name of signatory)

Secretary

(title of signatory)

CONSENT

The Respondent identified below has had an opportunity to confer with EPA to discuss this Order. The Respondent hereby consents to the issuance of this Order and to its terms. Furthermore, the individual signing on behalf of Respondent certifies that he or she is fully authorized to agree to the terms and conditions of this Order and to legally bind Respondent.

NAME OF RESPONDENT

ROCHE PRODUCTS INC.
(printed)


(signature)

5/28/91
DATE

Edward MacMullan
(printed name of signatory)

President
(title of signatory)

CONSENT

The Respondent identified below has had an opportunity to confer with EPA to discuss this Order. The Respondent hereby consents to the issuance of this Order and to its terms. Furthermore, the individual signing on behalf of Respondent certifies that he or she is fully authorized to agree to the terms and conditions of this Order and to legally bind Respondent.

NAME OF RESPONDENT

F.A. FORTEZA

(printed)

✓ 

(signature)

THE SHELL CO. (P.R.) LTD.

(printed name of signatory)

MANAGING DIRECTOR

(title of signatory)

31 May 1991

DATE

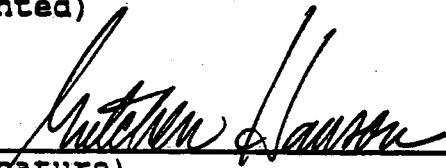
CONSENT

The Respondent identified below has had an opportunity to confer with EPA to discuss this Order. The Respondent hereby consents to the issuance of this Order and to its terms. Furthermore, the individual signing on behalf of Respondent certifies that he or she is fully authorized to agree to the terms and conditions of this Order and to legally bind Respondent.

NAME OF RESPONDENT

TEXACO PUERTO RICO INC.

(printed)


(signature)

JUNE 7, 1991
DATE

GRETCHEN HANSON

(printed name of signatory)

VICE PRESIDENT

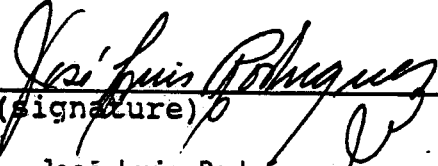
(title of signatory)

CONSENT

The Respondent identified below has had an opportunity to confer with EPA to discuss this Order. The Respondent hereby consents to the issuance of this Order and to its terms. Furthermore, the individual signing on behalf of Respondent certifies that he or she is fully authorized to agree to the terms and conditions of this Order and to legally bind Respondent.

NAME OF RESPONDENT

ROHO Investment, Inc.
(printed)


(signature)
José Luis Rodríguez
(printed name of signatory)

President
(title of signatory)

06-07-91
DATE